

# CONNECTICUT

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

Connecticut's water pollution law includes several provisions that may be used to take enforcement action against nonpoint source discharges.

- The law makes it a violation to discharge any substance to the waters of the state without a permit. "No person or municipality shall initiate, create, originate, or maintain any discharge of water, substance or material into the waters of the state without a permit for such discharge issued by the commissioner [of environmental protection]."<sup>1</sup> "Discharge" means "the emission of any water, substance or material into the waters of the state, whether or not such substance causes pollution."<sup>2</sup> And it is not limited to point sources. In setting standards for permits, the commissioner must consider "best management practices," defined as "practices which reduce the discharge of waste into the waters of the state and which have been determined by the commissioner to be acceptable based on, but not limited to, technical, economic and institutional feasibility."<sup>3</sup>

- It is also a violation to cause water pollution, regardless of the source. "No person or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes in violation of any provision of this chapter."<sup>4</sup> Pollution is defined as "the contamination or rendering unclean or impure or prejudicial to public health of any waters of the state by reason of any wastes or other material discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters..."<sup>5</sup>

- Connecticut law also authorizes the commissioner to issue an order whenever any person has created or is maintaining a condition "which reasonably can be expected to create a source of pollution to the waters of the state."<sup>6</sup> A separate provision authorizes the commissioner "to investigate or order the person who caused or reasonably may be expected to cause the pollution to investigate all points of existing or potential waste discharge which may directly or indirectly result in pollution of the waters of the state."<sup>7</sup>

Enforcement authorities include orders prohibiting or abating pollution and orders to correct potential sources of pollution.<sup>8</sup> Orders may be issued to the landowner where different from the discharger.<sup>9</sup> Orders may be enforced by injunction.<sup>10</sup> Civil penalties are available up to \$25,000 per day.<sup>11</sup> Criminal actions may be brought for willful violations or those with criminal negligence with a sanction of up to \$25,000 per day and/or 1 year imprisonment.<sup>12</sup> Water pollution inspection and enforcement is delegable to political subdivisions of the state, subject to retained authority of the commissioner.<sup>13</sup>

## Other Discharge Limitations

Connecticut law provides some enforceable mechanisms directed at pollution of sources of water supply, or creation of nuisances.

- The Department of Public Health may investigate any "source of water or ice supply from which water or ice used by the public is obtained, and, if it finds any pollution or threatened pollution which in its judgment is prejudicial to public health, it shall notify the owner or operator of such water company or system of ice supply, or the person or corporation causing or permitting such pollution or threatened pollution, and the Commissioner of Environmental Protection, of its findings and shall make such orders as it deems necessary to protect such water or ice supply and render such water or ice safe for domestic use."<sup>14</sup> Enforcement is by administrative order, which may be enforced by injunction; violation of an order leads to a fine of up to \$500 per day.<sup>15</sup>

- "Whenever any land...is so used..that it is a source of pollution to any lake, pond or water from which ice is procured for domestic use or....to the water stored in a reservoir used for supplying residents of a town, city or borough with water or ice, or to any source of supply to such reservoir, or when such water or ice is liable to pollution in consequence of the same, the authorities of such town, city or borough, or the town director of health, or the person, firm or corporation having charge of such reservoir or the right to procure ice therefrom, may apply for relief to the superior court...and said court may make any order...which, in its judgment, may be necessary to preserve the purity of such water or ice." This provision also allows such persons to enter and abate any "nuisance likely to pollute such water or ice" after notice to the owners and upon their refusal to do so.<sup>16</sup>

- "The discharge or exposure of sewage, garbage or any other organic filth into or upon any public place in such a way that transmission of infective material may result thereby..." is a statutory public nuisance.<sup>17</sup>

- "No materials or waste products from any mill, factory, slaughterhouse, rendering or fertilizing works, junk establishment, common carrier or other industry or utility shall be stored or deposited so as to cause the surrounding atmosphere, land or water to be contaminated or polluted in such a manner as to injure the public health or create offensive conditions."<sup>18</sup>

- "Any person who wilfully deposits material in any watercourse where it will naturally be carried to the land of another to his injury shall pay to the party injured thereby double damages and costs, unless, within a reasonable time after notice of the injury, he removes such material from such land."<sup>19</sup>

- "Any person who places, collects or allows to remain upon the surface of land owned or occupied by him, or discharges or allows to be discharged from his premises upon the land of another or upon any public land, any filthy water, garbage or other filthy or noxious matter, whereby the owner or occupant of land in the vicinity thereof is injured or annoyed, or discharges or deposits upon the watershed of any stream or reservoir used to supply water to any community filthy or noxious matter...shall be

fined not more than fifty dollars [and charged with any cost of removal, if not removed within three days]."<sup>20</sup>

It is the duty of local health directors to abate "all nuisances and sources of filth injurious to the public health." Abatement orders are issued and are enforceable by injunctive relief, and a civil penalty of \$250 per day may be assessed for each day the nuisance is maintained after the time fixed for abatement, and recovery of damages for abatement or removal.<sup>21</sup>

However, farming operations are exempt from nuisance actions under some circumstances: "no agricultural or farming operation...shall be deemed to constitute a nuisance, either public or private, due to alleged objectionable.....(4) use of chemicals, provided such chemicals and the method of their application conform to practices approved by the commissioner of environmental protection or, where applicable, the commissioner of public health, or (5) water pollution from livestock or crop production activities, except the pollution of public or private drinking water supplies, provided such activities conform to accepted management practices for pollution control approved by the commissioner of environmental protection;" provided that the farm has been in operation for one or more years and not substantially changed "and such operation follows generally accepted agricultural practices." "Inspection and approval of the agricultural or farming operation...by the commissioner of agriculture or his designee shall be prima facie evidence that such operation follows generally accepted agricultural practices." The exemption from nuisance liability does not apply "whenever a nuisance results from negligence or wilful or reckless misconduct in the operation...."<sup>22</sup>

## **Fish/Fisheries Laws**

Connecticut does not have a broad prohibition related to fisheries that may serve as an enforceable mechanism, but has some laws of limited utility in this context.

- The law provides that "No person shall place in any lake, pond or stream any lime, creosote or cocculus indicus or any other drug or poison injurious to fish" and imposes a fine of not more than \$100 per fish taken.<sup>23</sup> The law does not require an intent to take fish; however, the types of substances listed, coupled with the need to show intent to place the injurious substances, limit this section's potential usefulness in the nonpoint context.

- State law also allows the state to recoup restoration costs and damages, such as damage to fish and habitat, resulting from knowing or negligent violation of environmental laws, including the water pollution laws.<sup>24</sup>

## **OPERATIONAL REQUIREMENTS**

### **Forestry Requirements**

- Connecticut law requires any person engaged in commercial forest practices to obtain and maintain a state certificate. There are three classes of certificate: forester, supervising forest products harvester, and forest products harvester. Examinations are

required, and the certificate is valid for not more than five years; there is a requirement of continuing education biennially to maintain certificate.<sup>25</sup> Certified foresters, supervisors, and harvesters are required to file annual reports of their activities and continuing education.<sup>26</sup> These laws can provide a basis for assuring that commercial forest practices are conducted in accordance with the prevention of nonpoint source water pollution.

- State law authorizes the Commissioner of Environmental Protection to adopt regulations "governing the conduct of forest practices including, but not limited to, the harvest of commercial forest products and other such matters as the commissioner deems necessary to carry out the provisions [of this chapter]." "Such regulations shall provide for a comprehensive statewide system of laws and forest practices regulations which will achieve the following purposes and policies: (1) Afford protection to and improvement of air and water quality..."<sup>27</sup> The law also authorizes municipalities to regulate forest practices in a manner consistent with the state law; municipal regulations are effective only if they are approved by the Commissioner.<sup>28</sup> In addition, zoning regulations may restrict clear-cutting in areas with a "traprock ridge."<sup>29</sup> Enforcement tools include civil penalties of up to \$5,000 per day per offense, compliance orders, injunctions, and denial, suspension, or revocation of a certificate.<sup>30</sup>

## **Agriculture Requirements**

In addition to the exemption from nuisance liability the use of accepted agricultural practices provides under Connecticut law, state law also contains some other enforceable requirements.

- The Commissioner of Agriculture must adopt regulations "concerning acceptable management practices of intensive poultry farming," defined as more than 20,000 fowl confined within pens or buildings, and may issue "such orders as he deems necessary" to correct noncompliance.<sup>31</sup> The Commissioner may take action where intensive poultry operation is "causing, engaging in or maintaining, or is about to cause, engage in or maintain, any condition or activity which in his judgment may result in the introduction or spread of an environmental or health hazard" including issuance of an immediately effective abatement order without prior hearing. A hearing must be held within ten days. The Commissioner may also expend funds to abate an activity and recover such funds via a lien on the property.<sup>32</sup> Civil penalties are available for violations.<sup>33</sup>

- "No pigsty shall be built or maintained on marshy ground or land subject to overflow..."<sup>34</sup>

- State pesticide laws provide authority to prescribe regulations concerning the time, place, manner, methods, materials, amounts, and concentrations of application of pesticides to prevent damage to plants, wildlife, fish and other aquatic life, beneficial insects, animals, and humans.<sup>35</sup>

## Development and Other Earth-Disturbing Activities

- The Soil Erosion and Sediment Control Act<sup>36</sup> declares state policy to establish a "state-wide coordinated erosion and sediment control program which shall reduce the danger from storm water runoff, minimize nonpoint sediment pollution from land being developed and conserve and protect the land, water, air and other environmental resources of the state."<sup>37</sup> The statewide Council on Soil and Water Conservation develops guidelines for soil erosion and sediment control and land being developed, including model regulations that may be used by municipalities.<sup>38</sup> The zoning and subdivision regulations<sup>39</sup> adopted and enforceable by a municipality must require that "(1) Proper provision be made for soil erosion and sediment control; (2) a soil erosion and sediment control plan be submitted with any application for development when the disturbed area of such development is more than one-half acre; and (3) the municipality or the soil and water conservation district shall certify that the plan complies with regulations adopted pursuant to said sections."<sup>40</sup> However, a single family dwelling that is not part of a subdivision of land is exempt from soil erosion and sediment control regulations.<sup>41</sup>

- Certain targeted conservation and development planning requirements,<sup>42</sup> including protection of Long Island Sound from "hypoxia, pathogens, toxic contaminants and floatable debris,"<sup>43</sup> and conservation zones along the Connecticut and Niantic Rivers,<sup>44</sup> provide zoning standards that can allow local governments to establish enforceable practices relevant to nonpoint source pollution. Coastal management law also provides for regulation of earth-disturbing activities by municipalities subject to state policies.<sup>45</sup> Connecticut also provides for additional municipal regulation along protected river corridors and multiple use river corridors.<sup>46</sup>

### Endnotes

<sup>1</sup> Conn. Gen. Stat. Ann. § 22a-430(a) (West 1995 & Supp. 1997).

<sup>2</sup> Conn. Gen. Stat. Ann. 22a-423 (West 1995 & Supp. 1997).

<sup>3</sup> Conn. Gen. Stat. Ann. § 22a-430(b).

<sup>4</sup> Conn. Gen. Stat. Ann. § 22a-427 (West 1995 & Supp. 1997).

<sup>5</sup> Conn. Gen. Stat. Ann. 22a-423 (West 1995 & Supp. 1997). "Wastes" is broadly defined; and "sewage" expressly includes animal excretions.

<sup>6</sup> Conn. Gen. Stat. Ann. § 22a-432 (West 1995 & Supp. 1997).

<sup>7</sup> Conn. Gen. Stat. Ann. § 22a-424(m).

<sup>8</sup> Conn. Gen. Stat. Ann. §§ 22a-424(f), 22a-430(d), 22a-431, 22a-432; see also Conn. Gen. Stat. Ann. § 22a-7 (cease and desist order for "condition or activity...likely to result in imminent and substantial damage to the environment, or to public health").

<sup>9</sup> Conn. Gen. Stat. Ann. § 22a-433.

<sup>10</sup> Conn. Gen. Stat. Ann. §§ 22a-432, 22a-435.

<sup>11</sup> Conn. Gen. Stat. Ann. § 22a-438.

<sup>12</sup> Conn. Gen. Stat. 22a-438.

<sup>13</sup> Conn. Gen. Stat. Ann. § 22a-2a.

<sup>14</sup> Conn. Gen. Stat. Ann. § 25-34 .

<sup>15</sup> Conn. Gen. Stat. Ann. §§ 25-34, 25-36, 25-37.

<sup>16</sup> Conn. Gen. Stat. Ann. § 25-51.

<sup>17</sup> Conn. Gen. Stat. Ann. § 19-13-B1(d).

18. Conn. Gen. Stat. Ann. § 19-13-B22.
19. Conn. Gen. Stat. Ann. § 19a-337.
20. Conn. Gen. Stat. Ann. § 19a-340.
21. Conn. Gen. Stat. § 19a-206. Health directors of municipalities adjacent to streams and bodies of water have jurisdiction over them for public health purposes. § 19a-209.
22. Conn. Gen. Stat. Ann. § 19a-341.
23. Conn. Gen. Stat. § 26-119.
24. Conn. Gen. Stat. Ann. § 22a-6a.
25. Conn. Gen. Stat. § 23-65h. An applicant for the "forest products harvester" certificate is exempt from the examination requirement if the applicant has engaged in commercial forest practices at least once per year for the ten years preceding Oct. 1, 1991. Conn. Gen. Stat. § 23-65h(3).
26. Conn. Gen. Stat. § 23-65i.
27. Conn. Gen. Stat. § 23-65j.
28. Conn. Gen. Stat. § 23-65k.
29. Conn. Gen. Stat. § 8-2(c). However, selective timbering is permitted as of right in ridgeline setback areas. § 8-2(c)(3).
30. Conn. Gen. Stat. §§ 23-65n, 23-65l, 23-65m, 23-65o.
31. Conn. Gen. Stat. § 22-323a. A permit is required. § 22a-326f.
32. Conn. Gen. Stat. §§ 22-326d, 22-326e.
33. Conn. Gen. Stat. § 22-326. \$500 per day up to a maximum of \$25,000.
34. Conn. Gen. Stat. § 19-13-B23.
35. Conn. Gen. Stat. § 22a-66.
36. Conn. Gen. Stat. §§ 22a-325 to -329.
37. Conn. Gen. Stat. § 22a-325.
38. Conn. Gen. Stat. § 22a-328.
39. Conn. Gen. Stat. §§ 8-2, 8-25; see § 22a-327(6).
40. Conn. Gen. Stat. § 22a-329.
41. Conn. Gen. Stat. § 22a-329.
42. Conn. Gen. Stat. § 8-23.
43. Conn. Gen. Stat. §§ 8-23, 8-35a.
44. Conn. Gen. Stat. §§ 25-102a to -102l (lower Connecticut River), §§ 102aa to -102jj (upper Connecticut River), § 25-109(c) (Niantic River).
45. Conn. Gen. Stat. §§ 22a-90 et seq., esp. §§ 22a-101 to -109 (municipal programs and regulation).
46. Conn. Gen. Stat. §§ 25-200 to -210 (Protected Rivers Act), §§ 25-230 to -238 (Multiple Use Rivers Act).